

## **Consultation Regarding the Disposition of Unclaimed Cultural Items**

On November 15-17, 2005, the National NAGPRA Program held consultation meetings in Albuquerque, NM to obtain oral and written recommendations on regulations to be drafted regarding the disposition of unclaimed Native American cultural items that are excavated or discovered on Federal or tribal lands after November 16, 1990 [43 CFR 10.7]. Over 100 people attended the consultation meetings, with the following representatives providing oral or written recommendations.

### **Indian tribes –**

Mr. Shane Anton, Salt River Pima-Maricopa Indian Community, AZ  
Mr. Clarence Atwell, Santa Rosa Rancheria Tachi Yokut Tribe, CA  
Ms. Rose Berens, Bois Forte Band of Ojibwe, WI  
Ms. Ellyn Big Rope, Mescalero Apache Tribe, NM  
Mr. Terry Cole, Choctaw Nation, OK  
Mr. Walter Echo-Hawk, Native American Rights Fund, CO  
Mr. Lalo Franco, Santa Rosa Rancheria Tachi Yokut Tribe, CA  
Ms. Loretta Jackson-Kelly, Hualapai Tribe, AZ  
Mr. Joe Joaquin, Tohono O'odham Nation, AZ  
Mr. Terry Knight, Ute Mountain Ute Tribe, CO  
Mr. Ricardo Leonard, Salt River Pima-Maricopa Community, AZ  
Mr. Harvey Moses, Jr., Confederated Tribes of the Colville Reservation, WA  
Mr. Kirk Perry, Chickasaw Nation, OK  
Mr. James Riding In, Pawnee Nation, OK  
Mr. Ramon Riley, White Mountain Apache Tribe, AZ  
Mr. Gil Vigil, All Indian Pueblo Council, Albuquerque, NM  
Ms. Sherry White, Stockbridge-Munsee Tribe, WI  
Mr. Elvin Windy Boy, Cree and Chippewa Tribes of Rocky Boy, MT

### **Museums and national museum and scientific organizations –**

Mr. Ken Ames, Society for American Archaeology, Washington, DC  
Ms. Patricia Capone, American Association of Museums  
Mr. Keith Kintigh, Society for American Archaeology, Washington, DC  
Ms. Patricia Lambert, American Association of Physical Anthropologists  
Mr. James Nason, Thomas Burke Memorial Washington State Museum, WA  
Mr. John McClelland, Arizona State Museum, University of Arizona, AZ  
Mr. John Relethford, American Association of Physical Anthropologists  
Ms. Alice Sadongei, Arizona State Museum, University of Arizona, AZ

### **Native American Graves Protection and Repatriation Review Committee –**

Ms. Rosita Worl – Chair  
Mr. Willie Jones  
Mr. Colin Kippen  
Mr. Dan Monroe  
Mr. Vincas Steponaitis

Participants in the consultation meetings were requested to comment on four issues:

- (1) How should the regulations deal with the distinction between cultural items for which ownership or control has been ascertained pursuant to 43 CFR 10.6 (a) but the identified lineal descendant, Indian

tribe, or Native Hawaiian organization has not claimed the cultural items and cultural items for which ownership or control cannot be ascertained pursuant to 43 CFR 10.6 (a)?

This question elicited the greatest diversity of opinion. Some commenters acknowledged the distinction between cultural items for which ownership or control has been ascertained but the identified lineal descendant, Indian tribe, or Native Hawaiian organization has not claimed the cultural items, and cultural items for which ownership or control cannot be ascertained. Cultural items in the former category would be subject to special conditions, such as restrictions on research, exhibition, or conserved without the written permission of the appropriate lineal descendant or tribal official.

Some commenters rejected the distinction, recommending that all cultural items must be treated with respect while in Federal control.

Some commenters proposed an alternative distinction between:

- cultural items for which ownership or control is “inherent” pursuant to 25 USC 3002 (a)(1) and (a)(2)(B);
- cultural items which are claimable pursuant to 25 USC 3002 (a)(2)(B) or (a)(2)(C); and
- cultural items which are not claimable pursuant to 25 USC 2002 (a)(2)(B) or (a)(2)(C).

Only cultural items in the second category would be subject to regulations regarding the disposition of unclaimed cultural items.

Some commenters proposed another alternative distinction between:

- human remains and funerary objects; and
- sacred objects and objects of cultural patrimony.

Human remains and funerary objects would be subject to the common law tradition of respect for the dead and the right to a proper burial.

- (2) How long may a cultural item removed from Federal land after November 16, 1990 remain in Federal agency possession before it is considered unclaimed?

Most commenters recommended that Federal agencies should maintain cultural items removed from Federal land until a claim is made, although some proposed that unclaimed human remains and funerary objects should be reburied in a timely manner.

- (3) What are the appropriate dispositions for unclaimed cultural items?

Most commenters recommended that unclaimed cultural items should be held indefinitely until claimed by a lineal descendant, Indian tribe, or Native Hawaiian organization, although some proposed that unclaimed human remains and funerary objects should be reburied in a timely manner.

- (4) How should the regulations deal with the management, preservation, and use of unclaimed cultural items?

Commenters generally agreed that unclaimed cultural items should be managed, preserved, and used in accordance with provisions of 36 CFR 79.